IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1145 OF 2005
(FOR LEAVE TO FILE AN APPEAL)

The State of Maharashtra ..Applicant

Versus

Ravindra Janardhan Mhase & Ors. ..Respondents

Mrs.U.V.Kejriwal Addl.Public Prosecutor for the Applicant/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 02.03.2005.

PC

. Heard the learned Addl.Public Prosecutor for the Applicant/State.

2. We also perused the impugned Judgment and the evidence. As a matter of fact this Criminal application for leave to appeal suffers from delay of 101 days and there being no application for condonation of delay, it is liable to be dismissed as such. However, to satisfy ourselves, whether case for grant of leave is made out or not, we considered the matter on merits.

3. The present respondents were put up for trial for the offences punishable under Sections 147, 148, 149 & 307 read with 149 of IPC in Sessions case No.145/99.

4. Briefly stated the prosecution case was that on 12.01.1998 at 10.30 hrs. the accused persons formed an unlawful assembly outside the Company viz. Bombay Beverage, Taloja MIDC. The accused persons were armed with deadly weapons like cricket bats, stumps and hockey sticks. In prosecution of the common object the accused persons assaulted Premkumar (PW 1) to commit his murder.

5. Upon conclusion of the trial, the learned Ist Additional Sessions Judge, Raigad found it unsafe to rely upon the deposition of PW 1 because of material omissions and his evidence having not been supported by Raju Patel (PW 7) a Watchman, Surendra (PW 8) the panch witness of the spot panchanama and Prakash (PW 6), the Investigating officer.

6. That PW 1 sustained large number of injuries in the incident on 12.1.1998 is established by the deposition of Dr.Anand Upadye (PW 3) and the injury certificate (Exh.69). The question is whether the present respondents were assailants and injuries were inflicted by them on the person of PW 1.

7. According to PW 1 in the assault his shirt got torn and half shirt (torn) was lying on the spot ; the blood was oozing from his injuries; there were blood staines on his clothes viz. shirt and banian

and that police seized his half torn shirt. The aforesaid evidence of PW 1 does not get support from PW 6 (the Investigating officer) and PW 8 (Panch witness). The Investigating officer deposed that nothing was seized from the spot. The spot panchanama (Exh.77) does not disclose that the blood was noticed on the spot. The deposition of Investigating officer does not show that clothes of PW 1 were recovered and seized. PW 1 was admittedly not having good relations with some of the accused persons. In this backdrop, the prosecution case that the accused no.1 Ravindra Janardhan Mhatre (present 1st respondent) called him near the gate of the Company and PW 1 came out of the Company gate, is doubtful. Bharat Patil PW 2 is a watchman. According to him he was present at the time of incident on the gate of the Company. His deposition is that when he reached near the gate, there was crowd of the people and that he had not seen the accused persons who were beating the Complainant. Though PW 2 was declared hostile, nothing could be elicited by the prosecution in his Cross-examination.

8. We find that the learned trial Court has considered the prosecution evidence and it cannot be said that the view taken by him was neither possible nor plausible. Having considered the evidence, we do not find any perversity in the findings of the learned trial Judge.

9. No case for grant of leave is made out.

10. Criminal application for leave to appeal is accordingly rejected.

(R.M.LODHA,J)

(R.S.MOHITE,J)